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CIVIL DIVISION

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By: Jeremy S. Crawford
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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MORRIS COUNTY
DOCKET NO.: MRSC-191-05

PETER C. HARVEY, Attorney General of the
State of New Jersey, and KIMBERLY S.
RICKETTS, Director of the New Jersey Division
of Consumer Affairs,

Plaintiffs,

v.

ACTION REMODELING, LLC, d/b/a
ACTION REMODELING COMPANY,
WILLIAM H. SPEARS III, individually
and as owner, officer, founder, agent, servant,
employee and/or representative of
ACTION REMODELING, LLC, d/b/a
ACTION REMODELING COMPANY,
JOHN AND JANE DOES 1-10, XYZ
CORPORATIONS 1-10,

Defendants.

Civil Action

COMPLAINT

Plaintiffs Peter C. Harvey, Attorney General of the State of New Jersey, with offices located
at 124 Halsey Street, Fifth Floor, Newark, New Jersey, and Kimberly S. Ricketts, Director of the

New Jersey Division of Consumer Affairs, with offices located at 124 Halsey Street, Seventh Floor, Newark, New Jersey, by way of Complaint state:

JURISDICTION AND PARTIES

1. The Attorney General of the State of New Jersey ("Attorney General") is charged with the responsibility of enforcing the New Jersey Consumer Fraud Act ("CFA"), N.J.S.A. 56:8-1 et seq., and all regulations promulgated thereunder, N.J.A.C. 13:45A-1.1 et seq. The Director of the New Jersey Division of Consumer Affairs ("Director") is charged with the responsibility of administering on behalf of the Attorney General the CFA and the regulations promulgated thereunder.

2. By this action, the Attorney General and the Director (collectively referred to as "Plaintiffs") seek injunctive and other relief for violations of the CFA and the regulations promulgated thereunder. Plaintiffs bring this action pursuant to their authority under the CFA, specifically N.J.S.A. 56:8-8, 56:8-11 and 56:8-13. Venue is proper in Morris County, pursuant to R. 4:3-2, because it is the county in which defendants have advertised and/or conducted business and in which they maintain principal offices to conduct business.

3. Defendant Action Remodeling, LLC, doing business as Action Remodeling Company (hereinafter "Action"), is a limited liability company established in the State of New Jersey (the "State") on September 24, 2003. Upon information and belief, at least until March 14, 2005, Action maintained a principal business address of 1295 Route 23 South, Kinnelon, New Jersey 07405. Upon information and belief, Action currently maintains a business address of 1572 Route 23 North, Kinnelon, New Jersey 07405. Action's registered State agent is William H. Spears, III ("Spears"). Upon information and belief, Spears maintains a mailing address of 1295 Route 23 South, Kinnelon, New Jersey 07405.

4. Upon information and belief, at all relevant times, defendant Spears has been Action's President. Upon information and belief, at all relevant times, Spears has maintained a residential address of 25 Gravel Hill Road, Kinnelon, New Jersey 07405.

5. Upon information and belief, on or about June 11, 1998, Spears registered Action Remodeling Company as a trade name at the Morris County Clerk's Office.

6. Upon information and belief, John and Jane Does 1 through 10 are fictitious individuals meant to represent the officers, directors, shareholders, founders, owners, agents, servants, employees, sales representatives and/or independent contractors of Action who have been involved in the conduct that gives rise to this Complaint, but are heretofore unknown to Plaintiffs. As these defendants are identified, Plaintiffs shall amend the Complaint to include them.

7. Upon information and belief, XYZ Corporations 1 through 10 are fictitious corporations meant to represent any additional corporations that have been involved in the conduct that gives rise to this Complaint, but are heretofore unknown to Plaintiffs. As these defendants are identified, Plaintiffs shall amend the Complaint to include them.

8. Action and Spears are collectively referred to as "Defendants."

GENERAL ALLEGATIONS COMMON TO ALL COUNTS

9. Upon information and belief, since at least September 24, 2003, Defendants have engaged in the business of performing home improvements in the State and elsewhere including, but not limited to, home remodeling, cabinetry, electrical work, landscaping and stone and brick work to the exterior of residential homes and/or buildings.

10. Upon information and belief, Defendants have entered into home improvement contracts with consumers in this State and elsewhere to perform home improvement services

including, but not limited to, home remodeling, cabinetry, electrical work, landscaping and stone and brick work to the exterior of residential homes and/or buildings.

11. Upon information and belief, until at least March 15, 2005, Action maintained a website at www.actionremodeling.net.

COUNT I

VIOLATION OF THE CFA BY DEFENDANTS (UNCONSCIONABLE COMMERCIAL PRACTICES)

12. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 11 above as though fully set forth herein.

13. The CFA, N.J.S.A. 56:8-2, prohibits:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise....

14. In the operation of their home improvement business, Defendants have engaged in the use of unconscionable commercial practices, false promises, misrepresentations and/or the knowing concealment, suppression or omission of material facts.

15. Defendants have engaged in unconscionable commercial practices including, but not limited to, the following:

- a. Increasing the price of home improvement contracts after the commencement of construction without notifying consumers;
- b. Attempting to charge consumers for items already paid for under home improvement contracts;
- c. Failing to make repairs in a timely manner so as to leave consumers' home

unprotected;

- d. Failing to take necessary steps to protect consumers' home from the elements during the execution of home improvement contracts;
- e. Endangering the safety of consumers by failing to complete electrical work in a timely manner;
- f. Performing work in a faulty manner;
- g. Damaging consumers' home, property, and/or personal belongings while executing home improvement contracts;
- h. Accepting payment for home improvement work that Defendants never commenced and/or completed;
- i. Failing to provide refunds for home improvement work that Defendants never commenced and/or completed;
- j. Pressuring consumers to make payments on home improvement contracts and then failing to commence and/or complete the work;
- k. Failing to pay subcontractors resulting in their refusal to complete repairs and/or threats of liens imposed against consumers' property;
- l. Failing to complete repairs resulting in consumers' insurance company threatening to cancel coverage and forcing consumers to pay for necessary repairs;
- m. Burying concrete debris in consumers' backyard to avoid paying removal costs;
- n. Promising and failing to provide Porta-John at site;
- o. Promising and failing to provide certain subcontractors to perform work under home improvement contracts;
- p. Failing to uphold guarantee on work performed under home improvement contracts; and
- q. Failing to respond to consumers' telephone calls and/or written correspondence in a timely manner or at all.

16. Each unconscionable commercial practice by Defendants constitutes a separate violation under the CFA, N.J.S.A. 56:8-2.

COUNT II

VIOLATION OF THE CFA BY DEFENDANTS (FALSE PROMISES, MISREPRESENTATIONS AND KNOWING OMISSIONS OF MATERIAL FACT)

17. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 16 above as if more fully set forth herein.

18. In the operation of their home improvement business, Defendants have made false promises and/or misrepresentations including, but not limited to, the following:

- a. Misrepresenting in home improvement contracts the start and completion dates for the work specified therein;
- b. Misrepresenting to consumers the duration of time that they would be displaced from their homes;
- c. Misrepresenting that repairs would be completed within a certain time frame;
- d. Misrepresenting that certain products and/or items under home improvement contracts would be new and not used;
- e. Promising that certain products of particular size and quality would be used and unilaterally substituting promised products for those inferior quality;
- f. Misrepresenting to consumers that certain aspects or phases of repairs had passed local inspection when they had not;
- g. Promising and then failing to return to consumers' home to complete work under home improvement contracts;
- h. Misrepresenting to consumers that subcontractors had been paid;
- i. Promising and then failing to hire certain subcontractors; and

- j. Misrepresenting to consumers that construction debris had been disposed of properly.

19. In the operation of their home improvement business, Defendants have engaged in knowing omissions of material fact including, but not limited to, the following:

- a. Failing to include in home improvement contracts the date or time period within which work is to commence;
- b. Failing to include in home improvement contracts the date or time period within which work will be completed;
- c. Failing to include in home improvement contracts the consumers' signature;
- d. Increasing the cost of the service to be performed under the home improvement contract without discussing or informing the consumer of the same; and
- e. Failing to have any changes or revisions to home improvement contracts in writing and signed by all parties.

20. Each false promise, misrepresentation and/or knowing omission of material fact by Defendants constitutes a separate violation under the CFA, N.J.S.A. 56:8-2.

COUNT III

VIOLATION OF THE HOME IMPROVEMENT PRACTICES REGULATIONS BY DEFENDANTS

21. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 20 above as if more fully set forth herein.

22. The Regulations Governing Home Improvement Practices, N.J.A.C. 13:45A-16.1 et seq. ("Home Improvement Regulations"), promulgated pursuant to the CFA, among other things, prohibit certain acts and practices of a seller in connection with the sale, advertisement or performance of home improvement contracts.

23. Defendants are “seller[s]” within the definition of N.J.A.C. 13:45A-16.1.

24. At all relevant times, Defendants entered into “home improvement contracts” within the definition of N.J.A.C. 13:45A-16.1.

25. The Home Improvement Regulations provide, in pertinent part:

- a. Without limiting any other practices which may be unlawful under the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., utilization of a seller of the following acts and practices involving the sale, attempted sale, advertisement or performance of home improvements shall be unlawful hereunder:

....

7. Performance:

....

- ii. Fail to begin or complete work on the date or within the time period specified in the home improvement contract, or as otherwise represented, unless the delay is for reason of labor stoppage; unavailability of supplies or materials, unavoidable casualties, or any other cause beyond seller’s control. Any changes in the dates or time periods stated in a written contract shall be agreed to in writing; or
- iii. Fail to give timely written notice to the buyer of reasons beyond the seller’s control for any delay in performance, and when the work will begin or be completed.

[N.J.A.C. 13:45A-16.2(a)(7)(ii), (iii).]

26. Additionally, the Home Improvement Regulations include a writing requirement for contracts priced in excess of \$200.00 and provide, in pertinent part:

12. Home improvement contract requirements - writing requirement: All home improvement contracts for a purchase price in excess of \$200.00, and all changes in the terms and conditions thereof shall be in writing. Home improvement contracts which are required by this subsection to be in writing, and all changes in the terms and conditions thereof, shall be signed by all parties thereto, and shall clearly and accurately set forth in legible form all terms and conditions of the contract, including, but not limited to, the following:

- i. The legal name and business address of seller, including the legal name and business address of the sales representative or agent who solicited or negotiated the contract for the seller;

- iv. The dates or time period on or within the work is to begin and be completed by seller;

[N.J.A.C. 13:45A-16.2(a)(12)(i), (iv).]

27. Defendants violated the Home Improvement Regulations by engaging in certain conduct including, but not limited to:

- a. Failing to commence the work by the date or within the time period specified in the home improvement contract;
- b. Failing to complete the work by the date or within the time period specified in the home improvement contract;
- c. Failing to provide consumers with timely written notice of a delay in the commencement or completion of home improvement work;
- d. Failing to obtain consumers' written consent to any changes in the commencement and/or completion dates specified in the home improvement contract;
- e. Failing to include in home improvement contracts the dates or time periods on or within which the work is to commence;
- f. Failing to include in home improvement contracts the dates or time periods within which the work is to be completed; and
- g. Failing to include in home improvement contracts the consumer's signature.

28. Defendants' conduct constitutes multiple violations of the Home Improvement Regulations, N.J.A.C. 13:45A-1.1 et seq., each of which constitutes a per se violation of the CFA, N.J.S.A. 56:8-1 et seq.

PRAYER FOR RELIEF

WHEREFORE, based upon the foregoing allegations, Plaintiffs respectfully request that the Court enter judgment against Defendants:

- (a) Finding that the acts and omissions of Defendants constitute multiple violations of the CFA, N.J.S.A. 56:8-1 et seq., and the Regulations promulgated thereunder, specifically the Home Improvement Regulations, N.J.A.C. 13:45A-16.1 et seq.;
- (b) Permanently enjoining Defendants and their owners, agents, employees and representatives and all other persons or entities directly under their control, from engaging in, continuing to engage in, or doing any acts or practices in violation of the CFA, N.J.S.A. 56:8-1 et seq. and the Home Improvement Regulations, N.J.A.C. 13:45A-16.1 et seq., including, but not limited to, the acts and practices alleged in this Complaint;
- (c) Directing the assessment of restitution amounts against Defendants, jointly and severally, to restore any affected person, whether or not named in this Complaint, any money or real or personal property acquired by means of any alleged practice herein to be unlawful, as authorized by the CFA, N.J.S.A. 56:8-8;
- (d) Assessing the maximum statutory civil penalties against Defendants, jointly and severally, for each and every violation of the CFA, in accordance with N.J.S.A. 56:8-13;
- (e) Directing the assessment of cost and fees, including attorneys' fees, against Defendants, jointly and severally, for the use of the State of New Jersey, as authorized by the CFA, N.J.S.A. 56:8-11 and N.J.S.A. 56:8-19; and
- (f) Granting such other relief as the interests of justice may require.

PETER C. HARVEY
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: _____

Jeremy S. Crawford
Deputy Attorney General

Dated: October 26, 2005
Newark, New Jersey

RULE 4:5-1 CERTIFICATION

I certify, to the best of my information and belief, that the matter and controversy in this action involving the aforementioned violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., is not the subject of any other action pending in any other court of this State. I am not aware of any actions commenced by persons who submitted consumer complaints to the Plaintiffs: I am also aware that the Defendants are parties to certain other private contract, real property and/or personal injury actions, but I have no direct information that any such actions involve consumer fraud allegations. I further certify that the matter in controversy in this action is not the subject of a pending arbitration proceeding in this State, nor is any other action or arbitration proceeding contemplated. I certify that there is no other party who should be joined in this action at this time.

PETER C. HARVEY
ATTORNEY GENERAL OF NEW JERSEY

By: 

Jeremy S. Crawford
Deputy Attorney General

Dated: October 24, 2005
Newark, New Jersey

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Jeremy S. Crawford, Deputy Attorney General, is hereby designated as trial counsel on behalf of Plaintiffs in this matter.

PETER C. HARVEY
ATTORNEY GENERAL OF NEW JERSEY

By: _____

Jeremy S. Crawford
Deputy Attorney General

Dated: October 2, 2005
Newark, New Jersey